



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750-AI57

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Prescriptions and Clause Prefaces (DFARS Case 2015-D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify prescriptions and clause prefaces for clauses with alternates.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to clarify, for clauses with alternates, appropriate use of the basic clauses and their

alternates. In addition, the rule implements minor editorial changes. This rule does not change the text of any basic or alternate clause, and it does not change the requirement for use of any clause.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule only clarifies the use of existing clauses with alternates and makes minor editorial changes. The rule does not change the text of any clause, and it does not change the requirement for use of any clause. This final rule is not required to be published for public comment, because it has no effect beyond the internal operating procedures of DoD, and the rule has no cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225 - FOREIGN ACQUISITION

225.1101 [Amended]

2. Amend section 225.1101 by-

- a. In paragraph (10)(i)(A), removing “;\$100,000,” and adding “\$100,000, but is less than \$204,000,” in its place;
- b. In paragraph (10)(i)(B), removing “estimated value” and adding “estimated value equals or exceeds \$25,000, but” in its place;
- c. In paragraph (10)(i)(C), removing “\$100,000” and adding “\$100,000, but is less than \$204,000,” in its place; and
- d. In paragraph (10)(i)(D), removing “estimated value less than \$79,507” and adding “estimated value equals or exceeds \$25,000, but is less than \$79,507,” in its place.

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.216-7010 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text; and
- c. In the Alternate I introductory text—
 - i. Removing "216.506(d) (2)" and adding "216.506(d) and (d) (2)" in its place; and
 - ii. Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.216-7010 Requirements.

Basic. As prescribed in 216.506(d) and (d) (1), use the following clause:

* * * * *

- 4. Amend section 252.217-7000 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic clause introductory text; and
 - c. In the Alternate I introductory text, removing "217.208-70(a) (2)" and adding "217.208(a) and (a) (2)" in its place.

The revision reads as follows:

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

Basic. As prescribed in 217.208-70(a) and (a) (1), use the following clause:

* * * * *

- 5. Amend section 252.223-7006 by—

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text—
 - i. Removing “223.7106(b)” and adding “223.7106 and 223.7106(b)” in its place; and
 - ii. Removing the period at the end of the introductory text and replacing it with a colon.

The revision reads as follows:

252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

Basic. As prescribed in 223.7106 and 223.7106(a), use the following clause:

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- 6. Amend section 252.225-7000 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic provision introductory text; and
 - c. In the Alternate I introductory text, removing “225.1101(1)(ii)” and adding “225.1101(1) and (1)(ii)” in its place.

The revision reads as follows:

252.225-7000 Buy American—Balance of Payments Program Certificate.

Basic. As prescribed in 225.1101(1) and (1)(i), use the following provision:

* * * * *

7. Amend section 252.225-7001 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic clause introductory text; and
 - c. In the Alternate I introductory text, removing “225.1101(2)(iii)” and adding “225.1101(2)(i) and (2)(iii)” in its place.

The revision reads as follows:

252.225-7001 Buy American and Balance of Payments Program.

Basic. As prescribed in 225.1101(2)(i) and (2)(ii), use the following clause:

* * * * *

8. Amend section 252.225-7020 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic provision introductory text; and
 - c. In the Alternate I introductory text—
 - i. Removing “225.1101(5)(ii)” and adding “225.1101(5) and (5)(ii)” in its place; and
 - ii. Removing “basic clause:” and adding “basic provision:” in its place.

The revision reads as follows:

252.225-7020 Trade Agreements Certificate.

Basic. As prescribed in 225.1101(5) and (5)(i), use the following provision:

* * * * *

9. Amend section 252.225-7021 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic clause introductory text; and
 - c. In the Alternate II introductory text, by removing “225.1101(6)(ii)” and adding “225.1101(6) and (6)(ii)” in its place.

The revision reads as follows:

252.225-7021 Trade agreements.

Basic. As prescribed in 225.1101(6) and (6)(i), use the following clause:

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10. Amend section 252.225-7035 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic provision introductory text;
 - c. In the Alternate I introductory text, removing “225.1101(9)(ii)” and adding “225.1101(9) and (9)(ii)” in its place;
 - d. In the Alternate II introductory text, removing “225.1101(9)(iii)” and adding “225.1101(9) and (9)(iii)” in its place;
 - e. In the Alternate III introductory text, removing “225.1101(9)(iv)” and adding “225.1101(9) and (9)(iv)” in its place;

- f. In the Alternate IV introductory text, removing "225.1101(9)(v)" and adding "225.1101(9) and (9)(v)" in its place; and
- g. In the Alternate V introductory text, removing "225.1101(9)(vi)" and adding "225.1101(9) and (9)(vi)" in its place.

The revision reads as follows:

252.225-7035 Buy American-Free Trade Agreements-Balance of Payments Program Certificate.

Basic. As prescribed in 225.1101(9) and (9)(i), use the following provision:

* * * * *

- 11. Amend section 252.225-7036 by—
 - a. Removing the introductory text of the section;
 - b. Revising the Basic clause introductory text;
 - c. In the Alternate I introductory text, removing "225.1101(10)(i)(B)" and adding "225.1101(10)(i) and (10)(i)(B)" in its place;
 - d. In the Alternate II introductory text, removing "225.1101(10)(i)(C)" and adding "225.1101(10)(i) and (10)(i)(C)" in its place;
 - e. In the Alternate III introductory text, removing "225.1101(10)(i)(D)" and adding "225.1101(10)(i) and (10)(i)(D)" in its place;

f. In the Alternate IV introductory text, removing "225.1101(10)(i)(E)" and adding "225.1101(10)(i) and (10)(i)(E)" in its place; and

g. In the Alternate V introductory text, removing "225.1101(10)(i)(F)" and adding "225.1101(10)(i) and (10)(i)(F)" in its place.

The revision reads as follows:

252.225-7036 Buy American-Free Trade Agreements-Balance of Payments Program.

Basic. As prescribed in 225.1101(10)(i) and (10)(i)(A), use the following clause:

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12. Amend section 252.225-7044 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text; and
- c. In the Alternate I introductory text, removing "225.7503(a)(2)" and adding "225.7503(a) and (a)(2)" in its place.

The revision reads as follows:

252.225-7044 Balance of Payments Program--Construction Material.

Basic. As prescribed in 225.7503(a) and (a)(1), use the following clause:

* * * * *

13. Amend section 252.225-7045 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text, removing "225.7503(b) (2)" and adding "225.7503(b) and (b) (2)" in its place;
- d. In the Alternate II introductory text, removing "225.7503(b) (3)" and adding "225.7503(b) and (b) (3)" in its place;
- e. In the Alternate III introductory text, removing "225.7503(b) (4)" and adding "225.7503(b) and (b) (4)" in its place.

The revision reads as follows:

**252.225-7045 Balance of Payments Program--Construction Material
Under Trade Agreements.**

Basic. As prescribed in 225.7503(b) and (b) (1), use the following clause:

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14. Amend section 252.229-7001 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text; and
- c. In the Alternate I introductory text--
 - i. Removing "at 229.402-70(a) (2)" and adding "in 229.402-70(a) and (a) (2)" in its place; and

ii. Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.229-7001 Tax Relief.

Basic. As prescribed in 229.402-70(a) and (a)(1), use the following clause:

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15. Amend section 252.234-7003 by-

- a. Revising the section heading;
- b. Removing the introductory text of the section;
- c. Revising the Basic provision introductory text; and
- d. In the Alternate I introductory text, removing "234.7101(a)(2)" and adding "234.7101(a) and (a)(2)" in its place.

The revision reads as follows:

252.234-7003 Notice of Cost and Software Data Reporting System.

Basic. As prescribed in 234.7101(a) and (a)(1), use the following provision:

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16. Amend section 252.234-7004 by-

- a. Revising the section heading;
- b. Removing the introductory text of the section;
- c. Revising the Basic clause introductory text; and
- d. In the Alternate I introductory text, removing "234.7101(b)(2)" and adding "234.7101(b) and (b)(2)" in its place.

The revision reads as follows:

252.234-7004 Cost and Software Data Reporting System.

Basic. As prescribed in 234.7101(b) and (b)(1), use the following clause:

* * * * *

17. Amend section 252.235-7003 by—

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text—
 - i. Removing “at 235.072(b)(2)” and adding “in 234.072(b) and (b)(2)” in its place; and
 - ii Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.235-7003 Frequency authorization.

Basic. As prescribed in 235.072(b) and (b)(1), use the following clause:

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18. Amend 252.237-7002 by—

- a. Removing the introductory text of the section;
- b. Revising the Basic provision introductory text; and
- c. In the Alternate I introductory text, removing “237.7003(a)(2)” and adding “237.7003(a) and (a)(2)” in its place.

The revision reads as follows:

252.237-7002 Award to single offeror.

Basic. As prescribed in 237.7003(a) and (a)(1), use the following provision:

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19. Amend section 252.237-7016 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text, removing "237.7101(e)(2)" and adding "237.7101(e) and (e)(2)" in its place; and
- d. In the Alternate II introductory text, removing "237.7101(e)(3)" and adding "237.7101(e) and (e)(3)" in its place.

The revision reads as follows:

252.237-7016 Delivery tickets.

Basic. As prescribed in 237.7101(e) and (e)(1), use the following clause:

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20. Amend section 252.244-7001 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text-
 - i. Removing "244.305-71(b)" and adding "244.305-71 and 244.305-71(b)" in its place; and
 - ii. Removing the period at the end of the introductory text and add a colon in its place.

The revision reads as follows:

252.244-7001 Contractor purchasing system administration.

Basic. As prescribed in 244.305-71 and 244.305-71(a), use the following clause:

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21. Amend section 252.246-7001 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text-
 - i. Removing "246.710(1)(ii)" and adding "246.710(1) and (1)(ii)" in its place; and
 - ii. Removing the period at the end of the introductory text and adding a colon in its place.
- d. In the Alternate II introductory text-
 - i. Removing "at 246.710(1)(iii)" and adding "in 246.710(1) and (1)(iii)" in its place; and
 - ii. Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.246-7001 Warranty of data.

Basic. As prescribed in 246.710(1) and (1)(i), use the following clause:

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22. Amend section 252.247-7008 by-

- a. Removing the introductory text of the section;
- b. Revising the Basic provision introductory text; and
- c. In the Alternate I introductory text—
 - i. Removing "247.271-4(a) (2)" and adding "247.271-3 and 247.271-3(a) and (a) (2)" in its place; and
 - ii. Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.247-7008 Evaluation of bids.

Basic. As prescribed in 247.271-3 and 247.271-3(a) and (a) (1), use the following provision:

* * * * *

23. Amend section 252.247-7023 by—

- a. Removing the introductory text of the section;
- b. Revising the Basic clause introductory text;
- c. In the Alternate I introductory text—
 - i. Removing "247.574(b) (2)" and adding "247.574(b) and (b) (2)" in its place; and
 - ii. Removing the period at the end of the introductory text and adding a colon in its place.
- d. In the Alternate II introductory text—
 - i. Removing "247.574(b) (3)" and adding "247.574(b) and (b) (3)" in its place; and

ii. Removing the period at the end of the introductory text and adding a colon in its place.

The revision reads as follows:

252.247-7023 Transportation of supplies by sea.

Basic. As prescribed in 247.574(b) and (b)(1), use the following clause:

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